Supreme Court of the United States

OCTOBER TERM, 1967

No. 796

NATIONAL LABOR RELATIONS BOARD,
PETITIONER

v.

NDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 22

N WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX TO APPENDIX

Chronological List of Relevant Docket Entries.

In the Matter of

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO, and its LOCAL 22.

Case No. 2-CB-4148.

Court No. 16,055.

10.28.64	Charge against labor organization or its agents, filed.
12.30.64	Complaint and Notice of Hearing issued. (Marked "Exhibit A" and attached to General Counsel's Motion to strike portions of Petitioners'[1] answer and for judgment on the pleadings.)
1.14.65	Petitioners' answer to the Complaint, received. (Marked "Exhibit B" and attached to General Counsel's Motion to strike portions, etc.)
2. 4.65	General Counsel's Motion to strike portions of Petitioners' answer and for judgment on the pleadings, dated. (Granted, see Trial Examiner's Decision.)
2.25.65	Trial Examiner's Order to Show Cause, dated.
3. 2.65	Petitioners' reply to General Counsel's Motion, received.
3.12.65	Trial Examiner's Order vacating notice of hearing, cancelling hearing and further ordering proceeding be submitted for decision on pleadings, dated.
4. 2.65	Petitioners' letter and brief in opposition to General Counsel's motion, received.
11.22.65	Trial Examiner's Decision issued.
12.14.65	General Counsel's Exceptions to Trial Examiner's Decision, received.

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[1] Petitioners herein were respondents in the Board proceeding.

12.15.65 Petitioner's Exceptions to Trial Examiner's Decision, received.

6.23.66 Decision and Order of the National Labor Relations Board issued.

Complaint and Notice of Hearing.

It having been charged by Edwin D. Holder, herein called Holder, that Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, herein called IUMSWA, and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, herein called Local 22, both at times collectively called Respondents, have engaged in, and are engaging, in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.* herein called the Act, the General Counsel of the National Labor Relations Board herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Second Region, pursuant to Section 10 (b) of the Act and the Board's Rules and Regulations—Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Holder on October 28, 1964, and served by registered mail upon Respondents on or about October 30, 1964.

2(a) United States Lines Company, herein called U. S. Lines, is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New Jersey.

(b) At all times material herein, U. S. Lines has maintained its principal office and place of business at One Broadway, in the City and State of New York, where it is, and has been at all times material herein continuously engaged in operating oceangoing vessels in domestic and foreign commerce.

(c). During the past year, which period is representative of its annual operations generally, U. S. Lines, in the course and conduct of its business operations, performed services valued in excess of $50,000, of which services

valued in excess of $100,000 were performed in, and for various enterprises located in, states other than the state wherein it is located.

3. U. S. Lines, is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4(a). Respondents and each of them are and have been at all times material herein labor organizations within the meaning of Section 2(5) of the Act.

(b). IUMSWA is and has been at all times material herein the parent International of Local 22.

5. At all times material herein, Local 22 has been recognized by U. S. Lines as the collective bargaining representative of a unit of painters employed by U. S. Lines.

6. At all times material herein, Holder has been employed by U. S. Lines within the unit described above in paragraph 5.

7. At all times material herein, and until June 9, 1964, Holder was a member of Respondents.

8. On February 28, 1964, Holder filed an unfair labor practice charge against Local 22 with the Second Region of the Board, in Case No. 2-CB-3959, alleging that Local 22 violated Section 8(b)(1)(A) and (2) of the Act by causing U. S. Lines to discriminate against him because he had enaged in certain protected activity with respect to his employment by U. S. Lines.

9. On or about April 29, 1964, Local 22 notified Holder, by letter from John Armstrong, President of the Local 22 Trial Board, that on May 13, 1964, a hearing would be held before the Trial Board to determine if there was merit to charges brought against Holder that he violated Local 22's by-laws and the IUMSWA Constitution by filing the unfair labor practice charge described above in paragraph 8.

10. On or about June 8, 1964, at a membership meeting, Local 22 announced through its Executive Board that it had found Holder guilty of the charges set forth above in paragraph 9, and Local 22 thereupon expelled him from membership in Respondents.

11. On or about June 19, 1964, Holder appealed the decision of Local 22, described above in paragraph 10, to the General Executive Board of IUMSWA.

12. On or about October 7, 1964, the General Executive Board of IUMSWA denied Holder's appeal, described above in paragraph 11, and upheld and confirmed his expulsion from membership in Respondents.

13. By the acts described above in paragraphs 9, 10 and 12, and by each of said acts, Respondents restrained and coerced, and are restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

14. The acts of Respondents described above in paragraphs 9, 10, and 12, occurring in connection with the operations of U. S. Lines described above in paragraph 2 and 3, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 15th day of February 1965, at 9:30 a.m., at 745 Fifth Avenue, Fifth Floor in the City and State of New York, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondents shall each file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10 days from the service thereof, and that unless each does so all of the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board.

Dated at New York, New York, this 30th day of December, 1964.

IVAN C. MCLEOD,
Regional Director,
National Labor Relations Board,
745 Fifth Avenue,
New York, N. Y. 10022.

Answer to Complaint.

AND NOW come Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO (hereafter sometimes referred to as "Respondent National Union"), and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO (hereinafter sometimes referred to as "Respondent Local Union", and both of which are hereinafter sometimes referred to as "Respondents"), by M. H. Goldstein, their attorney, and for their answer to the allegations of the same numbered paragraphs of the Complaint issued against them in the above captioned cause, respectfully represent as follows:

1., 2(a) (b) (c), 3., 4(a) (b), 5., 6., 7. Admitted.

8. Admitted with the qualification that the unfair labor practice charge in Case No. 2-CB-3959 was filed by Holder only after he had previously filed with the Respondent Local charges accusing the President of the Respondent Local of violating certain provisions of the Respondent National Union's Constitution, and said charges had resulted in a finding that the Respondent Local's President was innocent of said charges. Thereupon, Holder filed his unfair labor practice charge in Case 2-CB-3959, which was based upon precisely the same facts as those on which his charges against the President of Respondent Local 22 had been based.

9. Admitted. For further answer, Respondents allege that Section 3(A) of Article V, of the Respondent National Union's Constitution, which is binding upon the Respondent Local, provides, in relevant part, as follows:

"Sec. 3. (A) No Union member in good standing in any Local may be suspended or expelled or otherwise disciplined or penalized without a fair and open trial, of which reasonable notice shall be given the accused member, before the Trial Board of the Local Union * * *. The accused member or members or the accusers may appeal the decision of the Local Union's Executive Board to the regular meeting of the General Membership of the Local Union next following the meeting of the Executive Board at which the decision was rendered, and within thirty (30) days after the membership's decision may appeal to the General Executive Board. The General Executive Board shall, after reasonable notice to the appellant of the time and place of hearing, hold a fair and open hearing on such appeal and, not later than 130 days after the first regular meeting of the General Executive Board following receipt of the appeal at the National Office, and in any event not later than the first day of the National Convention, shall render its decision affirming, overruling, or modifying either the findings of guilt or innocence, or the penalty imposed. Both the accused and the accuser shall have the right to file an appeal to the next National Convention by sending such appeal to the National Office of this Union by registered mail not later than thirty days after the decision by the General Executive Board."

Section 5 of Article V, of the Respondent National Union's said Constitution, provides as follows:

"Sec. 5. Every member, Local or subdivision of this Union considering himself, or itself aggrieved by any action of this Union, the G. E. B., a National Officer, a Local or other subdivision of this Union shall exhaust all remedies and appeals within the Union, provided by this Constitution, before he shall resort to any court or other tribunal outside of the Union."

Accordingly, Holder violated the aforesaid Section 5 by not exhausting the remedies afforded him by the aforesaid Section 3. (A) and by resorting, instead, to the filing of the unfair labor practice charges in Case No. 2-CB-3959 by

reason of his dissatisfaction with the Respondent Local's finding that its President was innocent of the charges which Holder had preferred against said President.

10., 11., 12. Admitted.

13. Respondents deny that they or either of them have by any of the acts described in paragraphs 9, 10, and 12 of the Complant, or by any other acts, restrained and coerced, or are restraining or coercing, any employees in the exercise of the rights guaranteed in Section 7 of the Act, and further deny that they have engaged in or are engaging in any unfair labor practice affecting commerce.

14. Respondents deny that their acts described in paragraphs 9, 10 and 12 of the Complaint, or any other of their acts with respect to Holder, have any connection with the operations of U. S. Lines or have any relation to trade, traffic and commerce among the several states, or lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, Respondents request that the Complaint be dismissed.

M. H. GOLDSTEIN,
Attorney for Respondents,
1 E. Penn Square Bldg.,
22nd Floor,
Philadelphia, Pa.

Dated: January 13, 1965.

Motion to Strike Portions of Respondents' Answer and for Judgment on the Pleadings.

On December 30, 1964, upon charges duly filed, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region, issued a Complaint and Notice of Hearing in this proceeding against Respondents, a copy of which marked Exhibit "A", is attached hereto and made a part hereof.

On January 13, 1965, Respondents, by M. H. Goldstein, Esq., their attorney, filed their Answer to said Complaint, a copy of which, marked Exhibit "B", is attached hereto and made a part hereof.

In their Answer Respondents admit all allegations of the Complaint except that they deny the allegations set forth in paragraphs 13 and 14 thereof. The allegations of paragraph 13 consist only of legal conclusions that the acts alleged in other paragraphs of the Complaint which Respondents, as set forth above, have admitted, constitute interference, restrain and coercion of employees in the exercise of rights of Section 7 of the Act, and constitute violations of Section 8(a)(1) of the Act. The allegations in paragraph 14 of the Complaint consist only of legal conclusions that the aforesaid admitted acts of Respondents, in conjunction with the admittedly interstate operations of United States Lines which were also admited, constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

In the paragraphs of their Answer relating to paragraphs 8 and 9 of the Complaint, however, Respondents, after admitting the allegations of said paragraphs, set forth additional allegations of fact which, even if true, would not constitute a defense to the violations alleged in the Complaint.

WHEREFORE, the undersigned Counsel for the General Counsel moves as follows:

1. That an Order be issued prior to the opening of the hearing herein

(a) striking from the two paragraphs of Respondents' Answer relating respectively to paragraphs 8 and 9 of the Complaint everything in each of said paragraphs following the word "Admitted"; and

(b) finding that Respondents have admitted all allegations of paragraphs 1 through 12 of the Complaint herein to be true; and

(c) granting General Counsel judgment on the pleadings.

2. That prior to, and without the necessity of, a hearing the Trial Examiner issue a Trial Examiner's Decision

against Respondents and each of them containing findings of fact and conclusions of law in accordance with the allegations of Complaint herein, and recommending an Order appropriate to remedy the unfair labor practice so found.

3. That General Counsel have such other, further and different relief as may be proper in the premises.

Dated New York, New York, February 4, 1965.

JANET M. STILES,
Attorney, National Labor Relations Board,
745 Fifth Avenue,
New York 22, New York.

To:

George Bokat,
Chief Trial Examiner,
National Labor Relations Board,
Washington 25, D. C.

Edwin D. Holder,
134 Gates Avenue,
Brooklyn, New York.

M. H. Goldstein, Esq.,
One East Penn Sq. Bldg.,
Philadelphia, Pa.

Ralph Katz, Esq.,
120 East 41st Street,
New York, N. Y.

Order to Show Cause.

Counsel for the General Counsel has filed and served upon the Respondents a Motion to Strike Portions of Respondents' Answer and for Judgment on the Pleadings which has been assigned to the undersigned Trial Examiner for ruling thereon. From the pleadings and motion it appears that there may be no genuine issues of fact for

trial, but only issues of law which can be decided on briefs. It there are no factual issues to tried, the Notice of Hearing herein should be vacated and set aside and the parties then be given an opportunity, within a time to be fixed by the undersigned, to file briefs on the legal issues of the case.

Following the usual jurisdictional allegations, the complaint alleges that Respondent Local 22, has been recognized by the U. S. Lines as the bargaining representative of its painters, that Edwin D. Holder has been employed in that unit and was a member of the Respondents until June 8, 1964. The Respondents' answer admits the foregoing allegations of the complaint (Paragraphs 1 through 7).

Paragraph 8 of the complaint alleges that about February 28, 1964, Holder filed unfair labor practice charges against Respondent Local 22, Case No. 2-CB-3959, alleging that it had vioated Section 8(b)(1)(A) and (2) of the Act, by causing U. S. Lines to discriminate against him because he had engaged in certain protected activity. Paragraph 9 alleges that thereafter Respondent Local 22, notified Holder that a hearing would be held before its trial board to determine if there was merit to charges brought against Holder that he violated the Respondents by-laws and constitution by filing the above unfair labor practice charges. The complaint further alleges (paragraphs 10, 11 and 12) that about June 8, 1964, Repondent Local 22, announced Holder had been found guilty of the union charges and expelled from membership in the Union and, on appeal, the General Executive Board of the Respondent International Union confirmed the decision and Holder's expulsion. In their answer the Respondents admit the allegations contained in paragraph 10, 11 and 12, but deny that such acts constitute a violation of the Act as set forth in paragraphs 13 and 14 of the complaint.

The motion herein is directed primarily to the Respondent's answer to paragraphs 8 and 9 of the complaint. In their answer the Respondents admit the allegations contained in paragraph 8, "with the qualification" that Holder did not file his unfair labor practice charges in Case No. 2-CB-3959, until after similar charges against the president of Respondent Local 22, had been filed within the

local and had been dismissed. The answer also admits the allegations of paragraph 9, with the addition that Holder failed to exhaust his internal union remedies prior to his filing the above-mentioned unfair labor practice charges. Therefore, it appears that there may be no genuine issues of fact for trial, but only issues of law which can be decided on briefs.

Accordingly, it is now

ORDERED:

That on or before March 11, 1965, the Respondents file a reply to the Motion to Strike Portions of Respondents' Answer and for Judgment on the Pleadings, stating whether there are any genuine issues of fact open for decision and if so, clearly identifying and stating such issues, and showing cause why the Notice of Hearing should not be vacated and the legal issues resolved by a writen decision after the submission of briefs.

/s/ REEVES R. HILTON,
Trial Examiner.

Dated: February 25, 1965.

Reply of Industrial Union, etc., *et al.*, to General Counsel's Motion to Strike Portion of Respondents' Answer and for Judgment on the Pleadings.

Conformant to the Order to Show Cause issued by Hon. Reeves R. Hilton, Trial Examiner, on February 25, 1965, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, by their attorney, M. H. Goldstein, reserving the right to submit briefs on the legal issue prior to decision of this case, object to the General Counsel's Motion to Strike Por-

tions of Respondents' Answer and for Judgment on the Pleadings, but admit that there are no genuine issues of fact in this case.

M. H. GOLDSTEIN,
Attorney for Respondents.

Telegraphic Order of Trial Examiner Hilton.

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INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA
534 COOPER STREET
CAMDEN, NEW JERSEY

LOCAL 22, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA
464 WEST 23rd STREET
NEW YORK CITY, NEW YORK

UNITED STATES LINES COMPANY
ONE BROADWAY
NEW YORK CITY, NEW YORK

MR. EDWIN D. HOLDER
134 GATES AVENUE
BROOKLYN, NEW YORK

RE: INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS, *ET AL.* (U. S. LINES COMPANY) CASE NO. 2-CB-4148. PURSUANT TO AN ORDER TO SHOW CAUSE ISSUED BY ME ON FEBRUARY 25, 1965, RETURNABLE MARCH 11, 1965, COUNSEL FOR THE RESPONDENTS FILED A REPLY, RECEIVED MARCH 2, WHEREIN THE RESPONDENTS GENERALLY OPPOSE THE GENERAL COUNSEL'S MOTION TO STRIKE AND FOR JUDGMENT ON THE PLEADINGS BUT ADMIT THERE ARE NO GENUINE ISSUES OF FACT TO BE TRIED IN THIS CASE. SINCE THERE ARE NO ISSUES OF FACT RAISED BY THE PLEADINGS REQUIRING A HEARING BEFORE A TRIAL EXAMINER AS A BASIS FOR THE ISSUANCE OF A TRIAL EXAMINER'S DECISION, IT IS NOW, UPON THE PLEADINGS AND THE MOVING PAPERS: ORDERED, THAT THE NOTICE OF HEARING OF DECEMBER 30, 1964, BE, AND IT HEREBY IS, VACATED, AND THE HEARING SCHEDULED FOR MARCH 15, 1965, BE, AND IT HEREBY IS, CANCELLED. IT IS FURTHER ORDERED THAT THIS PROCEEDING BE, AND IT HEREBY IS, DEEMED TO BE SUBMITTED FOR DECISION ON THE PLEADINGS, THE GENERAL COUNSEL'S MOTION AND THE RESPONDENT'S REPLY THERETO. ALL THE PARTIES ARE ADVISED OF THEIR RIGHT TO FILE BRIEFS, TO BE SUBMITTED TO ME ON OR BEFORE APRIL 2, 1965.

REEVES R. HILTON, TRIAL EXAMINER

2 2
3/12/65 12:15 p.m.

Trial Examiner's Decision on Motion for Judgment on the Pleadings.

STATEMENT OF THE CASE

Upon a charge filed October 28, 1964, by Edwin D. Holder, an individual, against Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, herein called IUMSWA, and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, herein called Local 22, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region, issued his complaint, dated December 30, 1964, alleging violation by each of the forenamed Respondents of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act. The Respondents jointly filed an answer admitting the factual allegations of the complaint but denying that their conduct complained of was violative of the Act. The answer defensively asserts certain additional facts.

On February 4, 1965, the General Counsel filed a motion to strike portions of the answer and for entry of judgment on the pleadings. The motion contended, in effect, that no litigable issue of fact was raised by the answer requiring a hearing for the taking of evidence and that the Respondents' liability in the case is established by the admissions contained in the answer. That motion, together with the General Counsel's supporting memorandum, was referred for ruling to Trial Examiner Reeves R. Hilton. On February 25, 1964, Trial Examiner Hilton issued and caused to be served on the Respondents an order requiring them to show cause why the motion should not be granted. The Respondents were specifically directed to note in their response "whether there were any genuine issues of fact open for decision and, if so, clearly identifying and stating such issues." On March 2, 1965, Trial Examiner Hilton received a reply to this order from the Respondents in which they admitted "there are no genuine issues of fact in this case" but stated their objection to the granting of the motion.

On March 12, 1965, Trial Examiner Hilton informed the parties that in view of the Respondents' admissions

that there were in this case no genuine issues of fact to be tried there was consequently no hearing required before issuance of his decision in the case on the merits. He thereupon ordered the hearing date, previously scheduled, to be vacated and further ordered that the proceeding be submitted for decision on the pleadings and afforded the parties opportunity to file briefs. Subsequently Trial Examiner Hilton received from the General Counsel a supplemental memorandum in behalf of the motion and from the Respondents a brief opposing the motion and a letter answering the General Counsel's supplemental memorandum.

Trial Examiner Hilton died before issuance of his decision in the case. Thereafter, the Board, pursuant to provisions of the Administrative Procedures Act and its own Rules and Regulations, requested the Chief Trial Examiner to designate another Trial Examiner in the proceeding in place of Trial Examiner Hilton. On October 12, 1965, I received such designation.

On the basis of the record before me, including the rulings by Trial Examiner Hilton, I make the following:

FINDINGS OF FACT

I. COMMERCE FACTS

The complaint alleges and the answer admits that United States Lines Company, herein called U. S. Lines, is a New Jersey corporation maintaining a principal office and place of business in New York City where it has been engaged in operating ocean going vessels in domestic and foreign commerce. During the year preceding issuance of the complaint U. S. Lines performed services valued in excess of $100,000 for various enterprises located in States other than New York. I find from the foregoing facts that U. S. Lines is engaged in interstate commerce within the meaning of the Act and that the Act's purposes will be effectuated by the Board's assertion of jurisdiction in this case over its operations.

II. The Labor Organizations Involved

IUMSWA and Local 22 are labor organizations within the meaning of the Act. IUMSWA is the parent International of Local 22.

III. The Unfair Labor Practices

The Respondents' alleged violation of Section 8(b)(1)(A) is based on their expulsion from membership in their organizations of charging party Holder because he had filed an unfair labor practice charge against Local 22 with the Board's Regional Office. The answer admits the essential facts pleaded by the complaint but denies that these facts constitute unlawful conduct. These are the facts, in addition to those above stated, established by the pleadings:

(a) Local 22 has at all times material been recognized by U. S. Lines as the collective bargaining representative of a unit of its painters.

(b) At all times material Holder was employed by U. S. Lines within the foregoing unit.

(c) At all times material and until June 9, 1964, Holder was a member of both Local 22 and IUMSWA.

(d) On February 28, 1964, Holder filed an unfair labor practice charge against Local 22 with the Board's Second Regional Office in Case No. 2-CB-3959 alleging that Local 22 had violated Section 8(b)(1)(A) and (2) of the Act by causing U. S. Lines to discriminate against him because he had engaged in certain protected activity with respect to his employment by U. S. Lines.

The answer expressly admits the facts related in the foregoing paragraph but defensively pleads certain other facts which the General Counsel has moved to strike as irrelevant. These are the assertions in the answer:

> "* * * the unfair labor practice charge in Case No. 2-CB-3959 was filed by Holder only after he had previously filed with Local 22 charges accusing the president of Local 22 of violating certain provisions of the IUMSWA constitution and said charges had resulted in a finding that the president was innocent

of said charges. The unfair labor practice charge filed by Holder in Case No. 2-CB-3959 was based on the same facts as those on which his charges against Local 22's president had been based."

(e) On or about April 29, 1964, Holder was notified by letter from Local 22's president that on May 13, 1964, a hearing would be held before Local 22's Trial Board to determine whether there was merit to charges brought against Holder that he had violated Local 22's by-laws and the IUMSWA constitution by filing the unfair labor practice charge in Case No. 2-CB-3959.

The answer expressly admits this allegation but defensively pleads certain other facts which the General Counsel has also moved to strike as irrelevant: The answer quotes the provisions of the IUMSWA constitution, binding on Local 22, pertaining to procedures for expulsion of members, and the constitutional provision compelling members aggrieved by any action of IUMSWA, its constituent locals or officers, to exhaust all remedies and appeals provided by the constitution before resorting to any outside court or tribunal. The answer asserts Holder violated the foregoing constitutional provision by the filing of a charge in Case No. 2-CB-3959 and attributes this action to his dissatisfaction with the finding by Local 22 that its president was innocent of the charges Holder had preferred against him.

(f) On or about June 8, 1964, at a membership meeting Local 22 announced through its Executive Board that it had found Holder guilty of the foregoing charges of violation of the Respondent's by-laws and constitution and thereupon Local 22 expelled him from membership in the Respondents.

(g) On or about June 19, 1964, Holder appealed the foregoing decision by Local 22 to the General Executive Board of IUMSWA and on or about October 7, 1964, that board denied Holder's appeal and upheld and confirmed his expulsion from membership in the Respondents.

The General Counsel relies upon the Board's decisions in *Skura*, 148 NLRB No. 74, *Wellman-Lord*, 148 NLRB No. 81 and *Tawas Tube*, 151 NLRB No. 9, to support the contention that the Respondents violated Section 8(b)

(1) (A) of the Act by Holder's expulsion from membership. The Respondents contend that the facts of the instant case are distinguishable from those in *Skura* and *Wellman-Lord* and that the Board's holdings in those cases are not here applicable. The Respondents further argue that the Board incorrectly decided *Skura* and that its holding should not therefore here be applied. Concerning *Tawas Tube*, the Respondents contend that the Board's holding therein supports the defense rather than the General Counsel's case.

In *Skura* a member (Skura) of the union involved in the case had filed an unfair labor practice charge with the Board's Regional Office against the union claiming its discriminatory refusal to refer him to available employment. The Regional Director thereafter notified Skura of his decision not to issue a complaint based on the charge, whereupon Skura withdrew the charge. Subsequently charges were preferred against *Skura* by the union's official claiming that he had violated the union's by-laws when he filed the unfair labor practice charge. These by-laws, like the by-laws in the instant case, compelled aggrieved members to exhaust all means provided by the constitution of the union's parent International before resorting to "any civil or other action." Although notified, *Skura* did not appear before the union's grievance committee for the hearing on the charge against him, was tried *in-absentia*, was found guilty of violating the foregoing constitutional provision and was fined $200. His subsequent tender of union dues was refused because the union's by-laws forbade acceptance of dues from members who had fines outstanding.

The Board held that the Union had violated Section 8(b) (1) (A) of the Act by fining *Skura* in the foregoing circumstances. It declared that the Act confers upon any person the right to file an unfair labor practice charge, that a fine is by nature coercive, and, hence, that the union's imposition of the fine against *Skura* for filing a charge with the Board was violative of his statutory rights. The Board concluded that the union had violated the Act by its conduct notwithstanding the union's rule prohibiting aggrieved members from resorting to external

procedures before exhausting internal union means for remedy of grievances.

Wellman-Lord was a companion case and was issued by the Board on the same day with its decision in *Skura*. The *Wellman-Lord* facts are essentially like those of *Skura* and the holdings in both cases are identical.

The *Tawas-Tube* decision was issued by the Board in the context of a representation proceeding. An issue in the case involved the union's expulsion from membership of two members one of whom had filed a petition to decertify the union as collective bargaining representative of the employees of the employer in the case. The other employee had with the first supported the decertification cause. While the election in the decertification proceeding was pending, these employees were notified by the union's president that they were to be tried by the union for violation of a provision of the parent International's constitution creating the offense of

> advocating or attempting to bring about the withdrawal from the International Union of any Local Union or any member or group of members.

The two employees were thereafter tried by a committee of their union's members and were expelled for their activities. The issue resulting from this action was whether the election in the decertification proceeding should be set aside on the ground that the expulsions restrained or coerced unit employees. The Regional Director concluded that under *Skura* the Union's conduct was an unfair labor practice and that the election should be set aside. The Board disagreed.

The Board construed the proviso to Section 8(b)(1)(A)[1] of the Act to exclude the foregoing union conduct from the proscriptions of that section. The expulsions were regarded by the Board as "appropriate union disciplinary action under the circumstances." Noting that *Skura* was not a controlling precedent, the Board empha-

[1] The proviso states that the language of Section 8(b)(1)(A) "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

sized that it had, in deciding the *Skura* case, "limited the scope of union disciplinary action generally allowable under the terms of Section 8(b)(1)(A)'s proviso because of the importance of safeguarding prompt and unimpeded access to the Board's processes by employees complaining of union infringement of their statutory rights. We held that in light of this overriding policy it was beyond the competence of the Union to enforce its rule by coercive means and thus deter employees from resorting to Board processes in such circumstances."

It is clear that the *Tawas Tube* decision does not disturb the Board's *Skura* holding. Union discipline which coerces members is still unlawful when administered to punish employees who file unfair labor practice charges with the Board seeking redress of their grievances against a union or its officials, and it is immaterial to this holding that the charges were filed with the Board in contravention of the union's constitutional or by-law provisions compelling exhaustion of internal union procedures before resort to the Board's processes. Application of these governing Board principles to the facts of the instant case compels the conclusion that by the expulsion of Holder for membership because he had filed unfair labor practice charges against Local 22 with the Board's Regional Office in Case No. 2-CB-3959 the Respondents violated Section 8(b)(1)(A) of the Act.

In reaching the foregoing conclusion I accord no merit to the contention in the Respondents' letter answering the General Counsel's Supplemental Memorandum that the Board's *Tawas Tube* holding should be construed to mean that an expulsion from membership, unlike the imposition of a fine, has no coercive effect upon employees in the exercise of statutory rights. There is no support in *Tawas Tube*, or in logic, for this generalization. Although the Board in *Tawas Tube* regarded the expulsion of employees who were seeking the union's decertification as an ineffective deterrent against resorting to the Board's processes, it said this while underscoring the fact that "loss of membership was of no significance" to these employees. This is not true in Holder's case. There is no indication that continuation of his membership in the Respondents

meant nothing to him. To the contrary, this very proceeding, initiated by Holder's filing of unfair labor practice charges against the Respondents for his expulsion, shows positively that his membership was significant to him. Further, I have no doubt that, if, as the Board said in *Skura*, "a fine is by nature coercive", an expulsion from membership even more effectively coerces employees. The ultimate penalty associated with the imposition of a fine is loss of membership in the union which may be avoided by payment of the fine. Expulsion from membership leaves no room for grace. The ultimate penalty, with loss of benefits inherent in union membership including a voice in the democratic decisions of the organization materially affecting the welfare of members, is immediate and final.

Having concluded from the facts established by the pleadings that the Respondents have violated Section 8(b)(1)(A) of the Act, the General Counsel's motion for judgment on the pleadings is granted. There is, accordingly, no need to pass on the General Counsel's motion to strike portions of the Respondents' answer.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of U. S. Lines, described in section I, above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The Remedy

Having found that the Respondents have engaged in unfair labor practices violative of Section 8(b)(1)(A) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. United States Lines Company is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By expelling Edwin D. Holder from membership in their organizations because Holder had filed unfair labor practice charges with the Board without first exhausting his internal union remedies, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this proceeding I recommend that Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, their officers, agents, and representatives shall:

1. Cease and desist from:

(a) Expelling employees from membership in their organizations because they have filed unfair labor practice charges with the Board against them or their officials without first exhausting their internal union remedies.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed employees in Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Reinstate to membership in their organizations Edwin D. Holder without any loss of status as a member resulting from his expulsion.

(b) Post at their business offices and at all other places where notices to members are customarily posted, in conspicuous places, copies of the notice attached hereto marked "Appendix."[2] Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by official representatives of the Respondents, be posted by the Respondents immediately upon receipt thereof and maintained by them for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Second Region in writing within 20 days from the receipt of this Decision and Recommendations what steps they have taken to comply therewith.[3]

Dated at Washington, D. C., Nov. 22, 1965.

THOMAS N. KESSEL,
Trial Examiner.

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[2] In the event that these Recommendations shall be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of the United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[3] In the event that these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Second Region in writing within 10 days from the date of receipt of this Order what steps the Respondents have taken to comply herewith."

NOTICE

TO ALL MEMBERS OF INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO AND LOCAL 22, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO (UNITED STATES LINES COMPANY)

PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER OF THE NATIONAL LABOR RELATIONS BOARD AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NATIONAL LABOR RELATIONS ACT

We hereby notify you that:

WE WILL NOT expel employees from membership in our organizations because they have filed unfair labor practice charges with the National Labor Relations Board against us or our officials without first exhausting their internal union remedies.

WE WILL reinstate Edwin D. Holder to membership in our organizations without loss of any status as a member because of our expulsion of Holder from membership.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

LOCAL 22, INDUSTRIAL UNION OF MARINE AND SHIFBUILDING WORKERS OF AMERICA, AFL-CIO (UNITED STATES LINES COMPANY)
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 5th Floor Squibb Building, 745 Fifth Avenue, New York, New York 10022 (Tel. No. 751-5500).

Decision and Order.

On November 22, 1965, Trial Examiner Thomas N Kessel issued his Decision in the above-entitled proceedings, finding that the Respondents had engaged in and were engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and the entire record in this case, including the exceptions and briefs, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the modifications noted herein.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommendations of the Trial Examiner, as modified below, and hereby orders that the Respondents, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, their officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommendations, as herein modified:

1. Delete from paragraph 1(a) of the Trial Examiner's Recommendations, and from the first paragraph of

[1] In this connection and for a detailed discussion of the issues presented by this case, see the recently issued case of *Van Camp Sea Food Co., Inc.*, 159 NLRB No. 47.

the Appendix attached to the Trial Examiner's Decision the last line beginning with the words, "without first exhausting * * *."

2. Substitute for paragraph 2(a) the following:

"(a) Upon request, reinstate Edwin D. Holder to membership in their organizations without requiring payment of back dues for the period of his expulsion, except for that portion of his dues which is shown at the compliance stage to be regularly allocable to the cost of insurance premiums, pension contributions and other welfare benefits accruing to Respondents' members; to the extent that benefits such as life insurance, health, and medical insurance and benefits and the like cannot be made retroactively for Holder, Respondents shall reimburse Holder for any expenses or losses, with interest thereon at 6 percent per annum, suffered as a result of the absence of such benefits, less the proportion of Holder's dues which would have been allocable to the payment of premiums for or other purchase of such benefits."

3. Substitute for the second indented paragraph of the attached "Appendix" the following:

WE WILL reinstate EDWIN D. HOLDER, upon application, to membership in our organizations without loss of any status as a member because of our expulsion of Holder from membership, and we will reimburse him, with interest thereon, for any losses or expenses suffered because of the absence of certain benefits during the period of his expulsion in accordance with a Decision and Order of the National Labor Relations Board.

Dated, Washington, D. C., Jun. 23, 1966.

FRANK W. MCCULLOCH,
Chairman,
JOHN H. FANNING,
Member,
HOWARD JENKINS, JR.,
Member,
(SEAL) National Labor Relations Board.

FORM NLRB-508 (2-6C)

Form Approved Budget Bureau No. 64-R003.11

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: *File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

DO NOT WRITE IN THIS SPACE

CASE NO. 2-CB-4148

DATE FILED 10-28-64

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME
INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO and its LOCAL NO. 22

ADDRESS *(Street, City, State and ZIP Code)*
(1) 534 Cooper Street, Camden 2, New Jersey
(2) Local 22 - 464 West 23rd Street, New York, New York

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(b) SUBSECTION(S) (1)(A) *(List subsections)* OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE *(Be specific as to facts, names, addresses, plants involved, dates, places, etc.)*

On or about October 7, 1964, the above-named labor organization, by its officers, agents and representatives, terminated the membership of the Charging Party in said labor organizations because he filed charges under the Act in the matter of United States Lines and Local 22, Industrial Union of Marine Shipbuilders of America, AFL-CIO, Case Nos. 2-CA-9851 and 2-CB-3959.

Since on or about October 7, 1964, by the act set forth in the paragraph above, and by other acts and/or conduct, the above-named labor organization and its agents have restrained and coerced and continue to restrain and coerce the Charging Party in the exercise of rights guaranteed in Section 7 of the Act.

3. NAME OF EMPLOYER
UNITED STATES LINES

4. LOCATION OF PLANT INVOLVED *(Street, City, State, and ZIP Code)*
One Broadway
New York, New York

5. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*	6. IDENTITY PRINCIPAL PRODUCT OR SERVICE	7. NO. OF WORKERS EMPLOYED
Steamship Line		5,000

8. FULL NAME OF PARTY FILING CHARGE
EDWIN D. HOLDER

9. ADDRESS OF PARTY FILING CHARGE *(Street, City, State and ZIP Code)*
134 Gates Avenue
Brooklyn, New York

10. TEL. NO.
MA 2-2882

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY /s/ Edwin D. Holder
(Signature of representative or person making charge)
EDWIN D. HOLDER
An Individual
(Title or office, if any)

October 28, 1964
(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

Delson & Gordon, Esqus.
120 E. 41st Street, NYC - Att: Ralph Katz, Esq.

GPO 869-535

Form NLRB-501 (4-62)

Form approved Budget Bureau No. 64-R011

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 2-CA-9851

Date Filed 2-28-64

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer: UNITED STATES LINES

Number of Workers Employed: Several thousands

Address of Establishment (Street and number, city, zone, and State): 1 Broadway, New York, N.Y.

Type of Establishment (Factory, mine, wholesaler, etc.): Ship owners

Identify principal product or service: Sea and ocean transportation

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about October 8, 1963 the above named Employer discriminated against Edwin D. Holder in the assignment and distribution of work because of his activities on behalf of Local 22, Industrial Union of Marine Ship-Builders of America, AFL-CIO.

By these and other acts, the above named Employer has interfered with, restrained and coerced, and continues to interfere with, restrain and coerce its employees in the exercise of rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)

Edwin D. Holder

4. Address (Street and number, city, zone, and State): 134 Gates Ave., Brooklyn, N.Y.

Telephone No.: TA 2-2682

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Edwin D. Holder
(Signature of representative or person filing charge)

February 28, 1964
(Date)

Edwin D. Holder
an individual
(Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

U.S. GOVERNMENT PRINTING OFFICE 1963—O-649170

GPO 999025

FORM NLRB-508 (12-62)

Form Approved
Budget Bureau No. 69-R003.1

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: *File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

DO NOT WRITE IN THIS SPACE

CASE NO. 2-CB-3959
(2-CA-9851)

DATE FILED 2-28-64

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME
LOCAL 22, INDUSTRIAL UNION OF MARINE SHIP-BUILDERS OF AMERICA, AFL-CIO

ADDRESS (Street, City, State and ZIP Code)
464 West 23 St., New York, N.Y.

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(b) SUBSECTION(S) (1)(A) and (2) (List subsections) OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (*Be specific as to facts, names, addresses, plants involved, dates, places, etc.*)

On or about October 8, 1964, the above named labor organization caused the United States Lines to discriminate against Edwin D. Holder because he engaged in concerted activities with respect to the conditions of his employment.

By these and other acts, the above named labor organization has interfered with, restrained and coerced, and continues to interfere with, restrain and coerce the Company's employees in the exercise of rights guaranteed in Section 7 of the Act.

3. NAME OF EMPLOYER
United States Lines

4. LOCATION OF PLANT INVOLVED (Street, City, State, and ZIP Code)
Pier 62, New York, N.Y.

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)	6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE	7. NO. OF WORKERS EMPLOYED
Pier	Ship Maintenance	250

8. FULL NAME OF PARTY FILING CHARGE
Edwin D. Holder

9. ADDRESS OF PARTY FILING CHARGE (Street, City, State and ZIP Code)
134 Gates Avenue, Brooklyn, N.Y.

10. TEL. NO.
MA 2-2882

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY /s/ Edwin D. Holder
(Signature of representative or person making charge)

February 28, 1964
(Date)

Edwin D. Holder
an individual
(Title or office, if any)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001.)

GPO 889-531

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

[NLRB SEAL]

745 Fifth Avenue

New York 22, New York Telephone Plaza 1-5500

May 20, 1964

Mr. Edwin D. Holder
134 Gates Avenue
Brooklyn, N. Y.

Re: United States Lines
Case No: 2-CA-9851

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation it appears that, because there is insufficient evidence of any violation of the Act, further proceedings are not warranted at this time.

The evidence adduced in the investigation does not support your charge alleging that the above-named company discriminated against you because of your union or other concerted activities. Aside from the questions raised concerning whether your charge was timely filed and served, a question not here determined, it appears that the company decided to cut down on the number of chargemen employed and that you lost employment as such chargeman only for that reason and not for any other reason prohibited by the Act. Further, the evidence does not tend to establish that the company violated the Act in any other manner encompassed by the charge. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19) you may obtain a review of this action by filing a request for such review with the General Counsel of the National Labor Relations Board. Washington 25, D. C., and a copy with me. This

request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the General Counsel in Washington, D. C. by the close of business on June 2, 1964. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file.

Very truly yours

IVAN C. MCLEOD
Regional Director

REGISTERED MAIL
R.R.R.

CC: General Counsel NLRB,
Washington 25, D. C.

United States Lines, 1 Broadway, New York, N. Y.
Local 22, Industrial Union of Marine Shipbuilders of America, AFL-CIO, 464 West 23rd Street, New York, N. Y.
Kirlin, Campbell & Keating, Esqs. Att: James A. Herbert, Esq., 120 Broadway, N. Y.
Burton H. Hall, Esq., 136 Liberty Street, New York, N. Y.

NATIONAL LABOR RELATIONS BOARD
SECOND REGION

[NLRB SEAL]

745 Fifth Avenue

New York 22, New York Telephone Plaza 1-5500

May 20, 1964

Mr. Edwin D. Holder
134 Gates Avenue
Brooklyn, N. Y.

Re: Local 22, Industrial Union of Marine Shipbuilding of America, AFL-CIO (United States Lines)

Case No: 2-CB-3959

Dear Sir:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation it appears that, because there is insufficient evidence of any violation of the Act, further proceedings are not warranted at this time.

The evidence adduced in the investigation does not support your charge that the above-named labor organization caused United States Lines to discriminate against you. No evidence has been disclosed which tends to establish that any union representative played any part in the company's decision not to utilize you as a chargeman or that the union or any of its representatives acted unlawfully in refusing to process a grievance respecting the company's action. Further the evidence does not tend to establish that the union violated the Act in any other manner encompassed by the charge. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19) you may obtain a review of this action by filing a request for such review

with the General Counsel of the National Labor Relations Board, Washington 25, D. C., and a copy with me. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the General Counsel in Washington, D. C. by the close of business on June 2, 1964. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file.

Very truly yours

IVAN C. MCLEOD
Regional Director

REGISTERED MAIL
R.R.R.

CC: General Counsel NLRB,
Washington 25, D. C.

Local 22, Industrial Union of Marine Shipbuilding of America, AFL-CIO, 464 West 23rd Street, New York, N. Y.
United States Lines, 1 Broadway, New York, N. Y.
Kirlin, Campbell & Keating, Esqs., 120 Broadway, New York, N. Y. Attn: James A. Herbert, Esq.
Burton H. Hall, Esq., 136 Liberty Street, New York, N. Y.

United States Court of Appeals for the Third Circuit

No. 16055

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 22, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review of an Order of the National Labor Relations Board

Argued March 29, 1967

Before: HASTIE and SEITZ, *Circuit Judges*, and BODY, *District Judge*

OPINION OF THE COURT

(Filed June 22, 1967)

By HASTIE, *Circuit Judge.*

On the petition of an international union and one of its locals for the review of an unfair labor practice decision and order, 159 NLRB No. 95, and a cross-petition of the National Labor Relations Board for enforcement of the order, we here consider the merits of the Board 's so-called *Skura* rule, as recently adopted in *Local 138, International Union of Operating Engineers and Charles S. Skura*, 1964, 148 N.L.R.B. 679, and sanctioned by the Court of Appeals for the District of Columbia in *Roberts* v. *N.L.R.B.*, D.C. Cir., 1965, 350 F. 2d 427.

The alleged unfair labor practice in this case is the union's conduct in discharging Edwin Holder from union membership because he had filed with the Board an unfair labor practice charge against the local and its president without first exhausting prescribed and available remedies within the labor organization.

Holder had filed intra-union charges with his local, alleging that the local president had wrongfully caused Holder's

employer to discriminate against him because of "certain legally protected activity". Except for the quoted phrase, the present record does not disclose details or even the substance of Holder's complaint. The local considered and dismissed these charges. The International Constitution of the union provided for an appeal from the decision of a local to the General Executive Board of the International. It also required that any member "aggrieved by any action of * * * a local * * * shall exhaust all remedies and appeals within the Union, provided by this Constitution, before he shall resort to any court or other tribunal outside of the Union". Disregarding this requirement and without taking any intra-union appeal from the local's decision, Holder filed with the Board an unfair labor practice charge against the local, alleging the same conduct of which he had unsuccessfully complained to the local. Here again, the present record fails to specify the details of that conduct. The General Counsel refused to issue a complaint and the unfair labor practice charge was dismissed.

Shortly thereafter, Holder was charged before the trial board of his local with violation of the above cited provision of the International Constitution. He was found guilty and expelled from membership. He then appealed to the General Executive Board of the International which confirmed his expulsion.

Holder next initiated the present unfair labor practice proceeding, charging that the labor organization had violated section 8(b)(1)(A) of the National Labor Relations Act, as amended, 29 U.S.C. § 158(b)(1)(A), by coercing him in the exercise of rights guaranteed by section 7 of the Act. Applying the *Skura* rule, the Board found a violation as charged and issued the unfair labor practice order which is now before us.

Section 8(b)(1)(A) reads in pertinent part as follows:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules

with respect to the acquisition or retention of membership therein * * *."

Thus, the only rights which this subsection protects are those contained in section 7, which reads in its entirety as follows:

> Employees shall have the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Accordingly, our first inquiry is whether section 7 protects an employee's asserted right to complain to the Board of his union's alleged unfair interference with his "legally protected activity" without first exhausting his remedy within the union as required by the union's constitution.

It will be observed that section 7 says nothing about any right to file charges with the Board. That section is concerned exclusively with an employee's freedom to unionize, to bargain collectively, and to engage in other concerted activities, as well as the concomitant freedom to refrain from participating in such organized or concerted activity. These freedoms are, by necessary implication, attended by a remedial right of the employee to charge coercive abridgement of them in an unfair labor practice proceeding before the Board. Thus, a section 8(b)(1)(A) unfair labor practice can be established here by showing that rights incidental to organization or bargaining were the basis of Holder's complaint which led to punitive union action, and in no other way.

It is argued here, as it was in the *Roberts* and *Skura* cases that section 7 protects the employee's freedom to complain to the Board of union misconduct regardless of the foundation for the charge. But as we have just pointed out, if any respect is to be accorded the language

of section 7, its protection of the right to file charges must be limited to complaints that the union has in some way interfered with the sort of activity that is described in that section. It may be that Holder's complaint was of such a breach of the union's duty to represent the employee fairly as the Court of Appeals for the Fifth Circuit recently found to be inherent in the collective bargaining process protected by section 7.. *Local Union No. 12, United Rubber, C.L.&P. Workers* v. *NLRB*, 5th Cir., 1966, 368 F. 2d 12. But this record contains no facts and no analysis by the Board upon the basis of which we can judge whether any type of violation of section 7 is involved here.

The *Skura* decision itself, which is indistinguishable from and followed in this case, is similarly lacking in any showing of how that controversy involved the subject matter of section 7. Only a few months earlier, in the so-called *Wisconsin Motor case, Local 283, UAW*, 1964, 145 NLRB 1097, the Board, after reviewing pertinent legislative history, had ruled that it had "not been empowered by Congress to police a union decision that a member is or is not in good standing or to pass judgment on the penalties a union may impose on a member so long as the penalty does not impair the member's status as an employee". 145 NLRB at 1104. In the *Skura* case, the Board recognized its Wisconsin Motor "opinion that the Act did not vest it with authority to police the internal discipline of a union short of job discrimination". 148 NLRB at 682. Hard put to distinguish the two cases factually, the Board announced and relied upon its view that "overriding public interest" required that a union not be permitted to discipline an employee in an effort to "limit access to the Board's processes". To that end, it apparently read into section 7, without any stated justification, a general right of access to the Board, unlimited by any requirement that the particular controversy involve organizational rights or rights inherent in collective bargaining.

In the *Roberts* case, the Court of Appeals said "we assume, and petitioners agree, as stated in their brief, that 'the right of an employee to file charges is protected under section 7' ". 350 F. 2d at 428. But the court seems not to have considered what we have attempted to demon-

strate, that in order for the right to file particular charges to be protected by section 7, the charges themselves must assert misconduct which, if proved, would constitute a deprivation of rights declared in that section.

The *Roberts* opinion also points out that section 8(a)(4) expressly makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges" under the Act. From this the court seems to imply that a union should be treated in the same manner and that Congress must have so intended. But while the Taft-Hartley Act undoubtedly undertook to impose many responsibilities upon unions equivalent to the responsibilities of employers under the original Wagner Act, we find no basis for concluding that whatever had been required of the one is now implicitly required of the other. Indeed, included in the Taft-Hartley bill as it passed the House was a provision, section 8(c)(5), which stipulated that punitive action by a union against a member for filing charges against the union or otherwise taking issue with it constituted an unfair labor practice. 1 Leg. Hist. L.M.R.A. 53-54. But the conference committee deleted this section and the bill was enacted without it. H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 46, U.S. Code Cong. Service 1947, 1135. Thus, it was not by inadvertence that Congress failed to include in the Taft-Hartley Act a general section explicitly protecting union members who filed charges against their unions from union reprisals.

In this area of Taft-Hartley Act restrictions on union conduct, imposed as "the result of conflict and compromise between strong contending forces", the Supreme Court has counseled "wariness in finding by construction a broad policy against" a type of conduct "when * * * it is clear that those interested in just such a condemnation were unable to secure its embodiment in enacted law". *Local 1976, United Brotherhood of Carpenters* v. *NLRB*, 1958, 357 U.S. 93, 99-100. Mindful of this admonition and its pertinence to the present issue, we think neither the board nor a court can properly employ its views of public policy as justification for engrafting upon section 7 a general right of unlimited access to the Board, the declaration of which the Congress considered but chose to withhold.

In these circumstances, if there were no other error in the Board's decision, we would remand the cause for reconsideration and further showing whether and how section 7 rights are involved in Holder's original complaint. However, there are other considerations which require that the Board's decision be set aside.

We have not heretofore discussed the proviso of section 8(b)(1)(A), "that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *." We think that proviso protects the union's action in this case.

We agree with the Board that the proviso does not enable a union to promulgate any rule it desires and hinge membership upon adherence. For example, a union rule which subjected a member to dismissal or other disciplinary action for filing charges with the Board against the union alleging conduct which, if proved, would constitute an unfair labor practice within some provision of the Act, would frustrate the operation of the Act and thus, by logical implication, be outside of the protection of the proviso. Here, however, the union rule in question required only that the union be given a fair opportunity to correct its own wrong before the injured member should have recourse to the Board. We do not see how such a rule offends public policy or impedes the normal and proper administration of the Act. Indeed, to the extent that such a rule relieves the Board of the unnecessary burden of grievances that can be settled within a union, it serves the purposes of the Act well. On the other hand, the member's right to charge his union before the Board is not detrimentally affected by requiring that the exercise of that right be postponed until after a practical and reasonable resort to internal remedies as provided by the union. *Cf. Harris* v. *International Longshoremen's Assn., Local 1291*, 3d Cir., 1963, 321 F. 2d 901. Of course, a court or an administrative agency will determine for itself whether the alleged intra-union remedy is in fact available and whether resort to it would impose unreasonable delay or hardship upon the complainant.

Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(4), both

confirms our view of the impact of public policy in a situation such as this and makes it mandatory that the *Skura* rule be rejected and the Board's action in this case set aside. Section 101(a)(4) appears in that part of the 1959 Act which is entitled "Bill of Rights of Members of Labor Organizations". It provides that "no labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency * * *. *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations * * *."

It will be observed that the subsection applies to proceedings "before any administrative agency", thus covering the present proceeding before the National Labor Relations Board. Indeed, the introductory section of the 1959 Act recites as one of its purposes the correction of union and management practices "which distort and defeat the policies of the" Taft-Hartley Act. But in applying the statute's general prohibition of union action restricting the right of a member to institute a proceeding before an administrative agency, the Board is equally obligated to respect the attending proviso, "that any such member may be required to exhaust reasonable hearing procedures * * * within such organization * * *."

To avoid the impact of this proviso, the Board argues that the proviso does not say who may require the union member to exhaust internal hearing procedures and then reaches the surprising conclusion that it is the Board, rather than any labor organization, that is authorized by Congress to require that a union member resort to reasonable intra-union procedures. We think this construction does violence to the structure and the sense of section 101. That section is entitled, "Bill of rights; constitution and by-laws of labor organizations". It consists of a number of provisions prescribing what unions may and may not do and require in the conduct of their affairs and in the treatment of their members. The general prohibition in the subsection here in question is expressly directed against labor organizations. Logically, and in normal

reading, the attendant and qualifying proviso is an exception stating what such an organization may do despite the preceding general restriction upon its action. Moreover, there is no need for a proviso to authorize a court or an administrative body to postpone its action until a litigant shall exhaust intra-union remedies, since judicial and quasi-judicial bodies frequently exercise such discretionary power to postpone their own action pending the exhaustion of other remedies as a matter of inherent right without benefit of legislation.

For these reasons we hold, as has been said in a concurring opinion in one of our earlier decisions, that this subsection means "that a union may not restrict a member's resort to the courts except that it may require that the member first devote not more than four months to reasonable grievance procedures within the organization".[1] See *Sheridan* v. *United Brotherhood of Carpenters, Local 626*, 3d Cir., 1962, 306 F. 2d 152, concurring opinion of Hastie, J., at 160. But *cf. Detroy* v. *American Guild of Variety Artists*, 2d Cir., 1961, 286 F. 2d 75, *cert. denied* 366 U.S. 929. It follows that in administering the National Labor Relations Act, the Board may not make the union's conduct in this case an unfair labor practice because section 101(a)(4) of the Labor-Management Reporting and Disclosure Act expressly sanctions it.

For these reasons, we reject the *Skura* rule and hold that the union has not committed any unfair labor practice within permissible interpretation of section 8(b)(1)(A).

According, the Board's petition for enforcement of its order will be denied and, on the petition to review, the order will be set aside.

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[1] There is no suggestion here that Holder could not have obtained intra-union review of his complaint against the local president within a four-month period. Indeed, when he appealed his expulsion, the General Executive Board of the International considered and decided the appeal very promptly.

United States Court of Appeals for the Third Circuit

No. 16055

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 22, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE

Before: HASTIE and SEITZ, *Circuit Judges*, and BODY, *District Judge*

THIS CAUSE came on to be heard upon the petition of Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, and its Local 22 to review the order of the National Labor Relations Board issued against Petitioners, their officers, agents, and representatives on June 23, 1966, and upon cross-petition of the National Labor Relations Board to enforce said Order. The Court heard argument of respective counsel on March 29, 1967, and has considered the briefs and the transcript filed in this cause. On June 22, 1967, the Court being full advised in the premises, handed down its decision denying the petition for enforcement and setting aside the Board's Order.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Third Circuit that the Order of the National Labor Relations Board directed against Petitioners, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, and its Local 22, their officers, agents, and representatives, be and it hereby is set aside.

By the Court,

WILLIAM H. HASTIE,
Circuit Judge.

Dated: August 7, 1967.

SUPREME COURT OF THE UNITED STATES

No. 796, October Term, 1967

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO AND ITS LOCAL 22

ORDER ALLOWING CERTIORARI—Filed January 15, 1968

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 280516 565